

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISRAEL MARTINEZ, *on behalf of himself and all others similarly situated,*

Plaintiff,

v.

JLM DECORATING, INC., JLM DECORATING NYC INC., COSMOPOLITAN INTERIOR NY CORPORATION, MOSHE GOLD, *individually*, and JOSAFATH ARIAS, *individually*,

Defendant.

20-CV-2969 (RA)

ORDER ADOPTING
REPORT AND RECOMMENDATION

RONNIE ABRAMS, United States District Judge:

On April 10, 2020, Plaintiff filed a complaint individually and on behalf of all others similarly situated against Defendants, asserting claims under the Fair Labor Standards Act and New York Labor Law. ECF No. 1. On February 15, 2023, the Court referred the case to Magistrate Judge Netburn for general pretrial purposes and class certification. ECF No. 84. The Court certified a class on March 20, 2024. ECF No. 147. On July 18, 2024, following Defendants' continued failure to comply with Judge Netburn's orders pertaining to discovery and class notice, she ordered Defendants to pay all reasonable attorneys' fees incurred by Plaintiffs since April 2024. ECF No. 158. On August 16, 2024, Defendants' attorney—the second to represent them in this action—filed a motion to withdraw, which Judge Netburn granted. *See* ECF Nos. 161, 165. Defendants were thereafter unable to retain counsel for a sustained period. On November 4, 2024, Judge Netburn explained to Individual Defendant Gold that the corporate entities would need counsel to proceed and directed him to locate new counsel. She further warned that if they failed to retain new counsel, she would recommend that their answer be stricken and a default entered.

See ECF Nos. 181, 184. She also directed Individual Defendant Josafath Arias to file a Notice of Pro Se Appearance by December 13, 2024. On December 17, 2024, because new counsel had not appeared on behalf of the corporate Defendants, and Individual Defendant Arias had not appeared *pro se* or with new counsel, Judge Netburn issued a report and recommendation (the “Report”) recommending that those Defendants’ answers be stricken and that a default be entered pursuant to Federal Rule of Civil Procedure 55(a). No defendant timely filed objections to the Report.

A district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Parties may object to a magistrate judge’s recommended findings “[w]ithin 14 days after being served with a copy of the recommended disposition.” Fed. R. Civ. P. 72(b)(2). “When the parties make no objections to the Report, the Court may adopt the Report if ‘there is no clear error on the face of the record.’” *Smith v. Corizon Health Servs.*, No. 14-CV-8839 (GBD), 2015 WL 6123563, at *1 (S.D.N.Y. Oct. 16, 2015) (quoting *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005)). “Furthermore, if as here . . . the magistrate judge’s report states that failure to object will preclude appellate review and no objection is made within the allotted time, then the failure to object generally operates as a waiver of the right to appellate review.” *Hamilton v. Mount Sinai Hosp.*, 331 F. App’x 874, 875 (2d Cir. 2009) (internal citations omitted).

As no objections to the Report were timely filed, the Court has reviewed Judge Netburn’s Report for clear error. After careful review of the record, the Court finds no error and thus adopts the well-reasoned Report in its entirety.

It is therefore ordered that Defendants JLM Decorating Inc., JLM Decorating NYC Inc., Cosmopolitan Interior NY Corporation, and Josafath Arias’s answers are stricken. The Clerk of Court is respectfully directed to enter a judgment of default against them. The Court will refer this

matter to Judge Netburn for a damages inquest by separate order. This case remains open as to Defendant Gold.

SO ORDERED.

Dated: April 10, 2025
New York, New York



Ronnie Abrams
United States District Judge